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RON CURRY
SECRETARY

DERRITH WATCHMAN-MOORE
DEPUTY SECRETARY

January 27, 2003

Mr. Don Hancock
Southwest Research and Information Center
P.O. Box 4524
Albuquerque, New Mexico 87106

RE: CLASS 1* MODIFICATION – PANEL CLOSURE

Dear Mr. Hancock:

Thank you for taking time to meet with me this past week. I have carefully considered your request that I deny the WIPP Class 1* permit modification request submitted to the New Mexico Environment Department (NMED) by the Department of Energy and Westinghouse TRU Solutions, LLC on November 25, 2002. The Permittees submitted this modification request to change the closure schedule for Panel 1 as a Class 1 permit modification requiring prior written approval of the agency, as specified in 20.4.1.900 NMAC (incorporating 40 CFR §270.42(a)(2)) ("Class 1*"). As you are aware, the previous NMED Secretary granted this permit modification on December 26, 2002.

After reviewing the Class 1* approval letter and 20.4.1.900 NMAC (incorporating 40 CFR §270.42), I have come to the conclusion that the modification was properly granted as a Class 1* application. Appendix I of §270.42 classifies "[c]hanges in the closure schedule for any unit, changes in the final closure schedule for the facility, or extension of the closure period, with prior approval of the Director" as a Class 1* modification. It appears that Secretary D'Antonio narrowly granted a delay in the construction of the Salado Mass Concrete element of the approved panel closure system for a five-year time period. This was a change in the closure schedule consistent with the engineering analysis submitted by the Permittees on December 20, 2002 and in compliance with 20.4.1.500 NMAC (incorporating 40 CFR §264.112(b)(6)).

I am assured by my staff that any changes in the closure design for Panel 1 and other panels are the subject of the Amended Closure Plan Class 3 modification. Once a Draft Permit is issued, it will be subject to public comment as well as a public hearing. Any changes to the panel closure design will be thoroughly reviewed and subjected to public scrutiny and discussion. NMED believes the appropriate forum for discussing issues regarding the final design of the closure system for Panel 1 is this pending Class 3 process, whereas the evaluation of the request to

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change the schedule for closure is clearly identified in the regulations as a Class 1 modification requiring agency approval.

I fully understand your frustration resulting from DOE's representations that it would have further meetings with you and your expectations that further comments would be considered. During my administration, I will ensure that the public has time to submit comments and decisions will not be rushed through without proper input. I strongly support the suggestion that in the future, DOE meet with participants to discuss relevant issues and attempt to arrive at mutually satisfactory outcomes.

I appreciate the concern and participation by you and other members of the public. I look forward to working closely with you on these and other important issues.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Ron Curry', with a long horizontal line extending to the right.

Ron Curry
Cabinet Secretary

cc: Charles Lundstrom NMED WWMD
James Bearzi, NMED HWB
John Kieling, NMED HWB
Steve Zappe, NMED HWB
Tracy Hughes, NMED OGC
Chuck Noble, NMED OGC
Laurie King, EPA Region 6
Betsy Forinash, EPA ORIA
Connie Walker, Trinity Engineering
Lindsay Lovejoy, AGO
Inés Triay, CBFO
Jim Pigg, CBFO
Steve Warren, Washington TRU Solutions
Matthew Silva, EEG
Joni Arends, CCNS
Sue Dayton, Citizen Action
Greg Mello, LASG
Jay Coghlan, NWNM
Geoff Petrie, NWNM
Penelope McMullen, Loretto Community
File: Red WIPP '03